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# NASA Policy Directive

**NPD 2090.6A**Effective Date: October 26, 2018  
Expiration Date: October 26, 2023**COMPLIANCE IS MANDATORY FOR NASA EMPLOYEES**[Printable Format \(PDF\)](#)

Request Notification of Change (NASA Only)

## **Subject: Authority to Enter Into License Agreements and Implementation of Licensing Authority**

**Responsible Office: Space Technology Mission Directorate**

### **1. POLICY**

- a. It is NASA's policy, consistent with statutory requirements, to promote the transfer and commercial utilization of inventions arising from NASA-supported research or development in which NASA has an ownership interest by the licensing of such inventions. Through this process, NASA ensures that the technologies developed for its missions go on to advance manufacturing, promote quality of life, and increase U.S. economic competitiveness. Accordingly, NASA maintains a Technology Transfer Program that ensures Agency processes are in place to protect intellectual property and transfer these assets in a manner that provides clear benefits for the Agency, the domestic economy, and the research community. A key element of this activity is the licensing of NASA inventions.
- b. Pursuant to 35 U.S.C. 207, Federal agencies are authorized to grant exclusive, partially exclusive, or nonexclusive licenses on federally owned inventions, see APPENDIX A.
- c. This NPD covers novel varieties of plant(s) that may be protectable under 7 U.S.C., §§ 2321-2582.
- d. NASA may grant exclusive, partially exclusive, or nonexclusive licenses for copyrighted materials in which it has sufficient rights to do so.
- e. No license for commercial applications will be granted to a potential licensee who has not provided NASA with a commercialization plan for development and marketing of the invention at issue.
- f. NASA does offer evaluation licenses (not requiring a full commercialization plan) for exploration of potential commercial applications. Such companies will have an executed evaluation license before the commencement of testing or evaluation of a technology for which NASA holds title. A Space Act Agreement or Cooperative Research and Development Agreement (CRADA) is typically not sufficient.
- g. NASA only licenses to entities that develop and/or market federally owned inventions to bring them to practical application within a reasonable time as specified in the license and continue to make the benefits of the invention reasonably accessible to the public.
- h. Preference will be given to potential licensees, both domestic and foreign, who will normally agree that any products embodying the invention or produced through the use of the invention at issue, will be manufactured substantially in the United States.
- i. When a potential licensee is interested in licensing more than one invention (e.g., more than one patent and/or patent application), NASA will make efforts to bundle the inventions under one license. In cases where multiple NASA Centers are involved, the NASA Headquarters Technology Transfer Program Executive and Agency Counsel for Intellectual Property will oversee the process and assign a lead Center for the negotiation and execution of the license and the equitable apportionment of the royalty income.

j. An exclusive or partially exclusive license will only be granted when all the following conditions are met:

(1) Granting the license is a reasonable and necessary incentive to call forth the investment capital and expenditures needed to bring the invention to practical application or, otherwise, promote the invention's utilization by the public.

(2) A finding is made by NASA that the public will be served by the granting of the license, as indicated by the potential licensee's intentions, plans, and ability to bring the invention to practical application or, otherwise, promote the invention's utilization by the public and that the proposed scope of exclusivity is not greater than reasonably necessary to provide the incentive for bringing the invention to practical application, as proposed by the potential licensee or, otherwise, promote the invention's utilization by the public.

(3) The potential licensee makes a commitment to achieve practical application of the invention within a reasonable time, which time may be extended by NASA upon the potential licensee's request, and the potential licensee's demonstration that the refusal of such extension would be unreasonable.

(4) Granting the license will not tend to substantially lessen competition or result in a violation of the Federal antitrust laws.

(5) In the case of an invention covered by a foreign patent application or patent, the interests of the Federal Government or United States industry in foreign commerce will be enhanced.

k. In negotiating terms for any license granted pursuant to this Directive, terms should be negotiated that provide the licensee incentive to commercialize the invention. In the case of exclusive or partially exclusive licenses, such terms will not tend to substantially lessen competition or create or maintain a violation of Federal antitrust laws.

l. The NASA model license agreement template(s) will be employed in negotiation of all license agreements. To the maximum extent practicable, NASA negotiates license agreements to include uniform terms across the Centers.

m. Licenses for use of NASA-patented technologies provide licensees with the permission needed to perform research, market, or begin production of the subject invention. Often, though, they do not transfer the knowledge and data necessary to begin such work. As such, licenses are typically accompanied by a Space Act Agreement to conduct the "know how" and "show how" necessary to understand the technology. Because of their routine nature, except in the instance of partnerships with foreign entities, these agreements are exempt from the Agency abstract review process.

## **2. APPLICABILITY**

a. This NASA Policy Directive (NPD) is applicable to NASA Headquarters and NASA Centers, including Component Facilities and Technical and Service Support Centers. This language applies to the Jet Propulsion Laboratory (JPL), a Federally Funded Research and Development Center (FFRDC), other contractors, grant recipients, or parties to agreements only to the extent specified or referenced in the appropriate contracts, grants, or agreements.

b. In this directive, all mandatory actions (i.e., requirements) are denoted by statements containing the term "shall." The terms "may" or "can" denote discretionary privilege or permission, "should" denotes a good practice and is recommended but not required, "will" denotes expected outcome, and "are/is" denotes descriptive material.

c. In this directive, all document citation is assumed to be the latest version unless otherwise noted.

## **3. AUTHORITY**

a. Plant Variety Protection Act of 1970, 7 U.S.C. §§ 2321-2582

b. Stevenson-Wydler Technology Innovation Act of 1980, 15 U.S.C. §§ 3701-3724

c. Patent Rights in Inventions Made with Federal Assistance, 35 U.S.C. §§ 200-212

d. Facilitating Access to Science and Technology, EO 12591, 3 CFR 220 (1987 comp.)

e. Licensing of Government-Owned Inventions, 37 CFR Part 404

## **4. APPLICABLE DOCUMENTS AND FORMS**

a. NPD 1401.6, NASA Records Management.

b. NPD 2092.1, Royalties or Other Payments Received by NASA from the Licensing or Assignment of Inventions.

c. NPR 1400.2, Publishing NASA Documents in the Federal Register and Responding to Regulatory Actions.

- d. NPR 2092.1, Distribution of Royalties and other Payments Received by NASA from the Licensing or Assignment of Inventions.
- e. NPR 7500.2, NASA Technology Transfer Requirements.
- f. NRRS 1441.1, NASA Record Retention Schedule.

## 5. RESPONSIBILITY

a. The Directors of NASA Centers and the Director of the NASA Management Office at the JPL (FFRDC) are responsible for:

(1) Executing (i.e., signing on behalf of the Agency) license agreements related to NASA-developed or NASA-funded technology to which NASA has title and executing modifications and terminations of such license agreements. The authority to sign such agreements may be delegated pursuant to paragraph 5f.

(2) Before executing a license agreement, license modification, or license termination, the official authorized to execute the license agreement, modification, or termination (hereinafter referred to as the "Signing Official") shall consider the recommendations of the Center Patent Counsel/Intellectual Property Counsel and the Center Technology Transfer Officer (CTTO), or their designee(s), provided in accordance with paragraphs 5b. and 5c. of this Directive.

(3) The Signing Official shall execute an exclusive or partially exclusive license agreement only if he or she has determined that the requirements listed in paragraph 1g. of this Directive are satisfied.

b. The CTTO, or their designee(s), shall:

(1) Perform commercial and technology assessments of NASA-owned inventions.

(2) Ensure that all technologies available for licensing are posted to the Agency's Technology Transfer Portal with substantial detail relevant to interested parties. (Available for licensing includes all patented and patent pending technologies not currently exclusively licensed.) At a minimum, this should include a brief marketing summary, suggestions on potential applications and benefits of the technology, and links to other resources, including the full text of the patent. Content should be tagged with metadata to optimize public accessibility. Provide notice of the availability of licensing, for federally owned inventions as managed by NASA, to the public consistent with 37 CFR Part 404.4.

(3) Coordinate with other Centers and Agency Technology Transfer Program staff to conduct additional activities to publicize availability of NASA- owned inventions to promote licensing of such inventions and identify potential licensees.

(4) Consult with Center Patent/Intellectual Property Counsel, or their designee(s), throughout the licensing process so that complete, effective, and timely legal review can be accomplished and inform Counsel of significant issues throughout the licensing process, particularly when any substantive changes to the NASA standard license agreement(s) are being considered.

(5) Negotiate the terms of license agreements and license modifications.

(a) In negotiating license agreements and modifications, the CTTO or their designee(s) shall employ the NASA model license agreement(s) to the extent practicable. The Center Patent/Intellectual Property Counsel shall approve any change to the standard language.

(b) Negotiations should be handled as expeditiously as possible.

(c) Terms, conditions, and milestones may be renegotiated in license modifications and may include a fee to be paid to NASA for the purpose of incentivizing the licensee to either commercialize the invention in a timely manner or terminate the license. However, debts that have become due will be handled in accordance with NASA regulations and Federal Debt Collection procedures.

(6) Provide a signature package for each proposed license agreement or modification to the Signing Official. To the extent practicable, electronic routing and approval may be used for the signature package. The signature package will include but is not limited to:

(a) Two license agreements or modifications signed by the license applicant or licensee. (Scanned signatures and e-signatures are permissible.)

(b) For license agreements, a copy of the license applicant's plan for developing and/or marketing the invention, with analysis, advice, and recommendation regarding the suitability of the license applicant's business plan and capability

to bring the invention to practical application or otherwise promote the invention's utilization by the public, as well as appropriateness of the proposed level of exclusivity.

(c) Recommendations and advice provided by the Center Patent/Intellectual Property Counsel, including legal review and analysis regarding compliance with appropriate statutes, regulations, and NASA policies applicable to the licensing of federally owned inventions.

(d) A brief explanation of the terms of the license agreement or modification and of any substantive deviations between the negotiated license agreement or modification and NASA model license agreement(s).

(e) In the case of exclusive and partially exclusive licenses to an invention covered by a foreign patent application or patent, an assessment of whether the benefits to the Federal Government or United States industry in foreign commerce will be enhanced.

(f) In the case of exclusive, co-exclusive, and partially exclusive licenses to an invention, a statement that the Federal Register notice and objection period procedures have been completed.

(7) Manage the NASA license portfolio, including:

(a) Monitoring and administering the performance of executed license agreements.

(b) Receiving and reviewing licensees' annual reports. (c) Tracking the licensees' achievements of required milestones and practical applications under the license agreements.

(d) Taking appropriate action, in consultation with the Center Patent/Intellectual Property Counsel, and as appropriate, the Center Financial Officer or their designee(s) when a licensee is not compliant with or is in breach of the license agreement.

(e) Entering and updating license agreements information in the NASA Technology Transfer System (NTTS).

(f) Providing required information related to NASA license agreements to other Federal agencies, as required by U.S.C. 3701 et seq.

(g) Storing official files related to licenses, review of agreements, amendments, and termination agreements.

(8) Maintain the official license files, comprising records associated with the negotiation, execution, modification, termination, and administration of license agreements, in accordance with the NPD 1401.6 and NRRS 1441.1.

(9) Coordinate with the NASA Shared Services Center (NSSC) on the collection and distribution of royalties and other payments due under license agreements in accordance with NPD 2092.1 and NPR 2092.1. The CTTO or their designee(s), together with the NSSC, administers the collection of royalties and other payments due under license agreements, modifications, and the distribution of royalties to Centers and eligible inventor(s). The CTTO, or their designee(s) sends an inventor(s) royalty distribution report to the NSSC and ,then, the NSSC makes the appropriate distributions to inventor(s).

(10) Provide license applications to the Office of General Counsel (OGC) or their designee(s) for the publication of Federal Register notices for proposed licenses that are exclusive or partially exclusive in accordance with 37 CFR Part 404.7 and NPR 1400.2. If objections to such a Federal Register notice are received within the time period prescribed in the notice or prior to formalizing said license, and, after contact with the objector, it appears that the objector is in a position to commercialize the invention and desires a license themselves to do so, sufficient time, not to exceed 45 days, for the objector to provide a license application will be provided. If all potential licensors require exclusivity for commercialization of the invention and the exclusivity set forth within the license applications overlap, within the requirements set forth in 37 CFR Part 404.7, a determination will be made, based on the applications, of which licensor is more likely to succeed in commercializing the invention, and such licensor shall be granted a license.

(11) Coordinate the execution of Non-Disclosure Agreements (NDA) by licensees or potential licensees when they are provided information on NASA inventions. In accordance with Agency policy, the standard NDA provided and implemented by the General Counsel will be used for this purpose, as well as for the purpose of encouraging licensing opportunities. To the extent licensees or potential licensees request alternative NDA language, the CTTO or their designee(s) shall obtain concurrence by the Center Patent/Intellectual Property Counsel before agreeing to the alternative language. The CTTO or their designee(s) will also coordinate, in compliance with the NASA OGC Policy on NDAs, responses to requests by licensees and potential licensees for NASA employees to execute NDAs.

c. The General Counsel, or designee(s)(the Agency Counsel for Intellectual Property or Center Patent/Intellectual Property Counsel), is responsible for the following:

(1) Consulting with the CTTO or designee(s) during the licensing process regarding all proposed licensing

agreement(s) or modifications.

(2) Providing timely legal review of all proposed license agreements, license modifications, and license terminations, to ensure compliance with appropriate statutes, regulations, and NASA policies applicable to the licensing of federally owned inventions.

(3) Providing the Signing Official, via the signature package prepared by the CTTO or their designee(s) under paragraph 5b(5) of this directive, with analysis, recommendations, and counsel regarding all license agreements, modifications, and terminations, including results of the legal review required at paragraph 5c(2).

(4) Providing and maintaining the NASA model license agreement(s), the legal instrument(s) to be employed in licensing NASA inventions as described herein. Accordingly, this directive requires that uniformity in licensing agreements across Centers be achieved to the maximum extent practicable. When requested to modify a NASA model license agreement, Agency Counsel for Intellectual Property, and the Center Patent/Intellectual Property Counsel, or their designee(s), will work jointly with the CTTO or their designee(s) toward establishing mutually acceptable standardized language for a model license agreement(s), as well as acceptability of requests for modifications to the standard language in the model licensing agreement(s).

(5) Ensuring that the standard Agency NDA is used, as necessary, when providing information on NASA inventions to licensees, license applicants, and potential licensees.

(6) The Center Patent/Intellectual Property Counsel is responsible for submitting requests pursuant to Executive Order 12591 to the Agency Counsel for Intellectual Property (ACIP), for coordination with the United States Trade Representative in regard to a patent license agreements with foreign entities.

d. The NASA Chief Financial Officer (CFO) and the Center CFOs, or their designee(s), are responsible for developing guidelines for the Agency's accounting and distribution of royalties and other payments received under license agreements consistent with the Agency's cost accounting system and budget development procedures. Each Center CFO will ensure that funds obtained pursuant to licensing agreements will be dispersed in accordance with NPD 2092.1 and NPR 2092.1.

e. The Executive Director of the NSSC or designee shall be responsible for coordinating with the CTTO or designee, in accordance with Section 5b (8) of this NPD.

f. The authority set forth in paragraph 5a of this directive may be delegated to NASA employees reporting directly to those enumerated in paragraph 5a. However, any such delegation will be limited to the fewest number of individuals or organization practicable in order to enhance efficient management of the licensing process. In addition, such delegation will not be made to any individual within or supervising an organization having responsibility for providing recommendations or guidance to the Signing Official related to the licensing of NASA inventions under paragraphs 5b and 5c of this Directive. All such delegations shall be in writing and indicate the extent and term of the delegation.

## 6. DELEGATION OF AUTHORITY

None.

## 7. MEASUREMENT/VERIFICATION

NASA Centers track all licensing activities in the NASA Technology Transfer System (NTTS), allowing NASA Headquarters to regularly monitor progress and activity. Licensing outcomes are reported annually to the Office of Management and Budget in accordance with the Technology Transfer Act. Internal intellectual property management measures of success will be as prescribed by the Technology Transfer Program's Annual Performance Goals and individual Center assignments/targets. Additionally, the NASA Headquarters Space Technology Mission Directorate conducts periodic appraisals against select requirements in this NPD.

## 8. CANCELLATION

NPD 2090.6, Authority to Enter Into License Agreements and Implementation of Licensing Authority, dated December 23, 2008.

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**/s/ James F. Bridenstine**  
**Administrator**

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**ATTACHMENT A: (TEXT)****ATTACHMENT A. DEFINITIONS**

Invention - Any discovery which is or may be patentable or, otherwise, protectable under Title 35 of the U.S. Code.  
h3> (URL for Graphic)

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